IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO-3633-2012 (O&M)

Sh. Rajbir and another

..... Appellants

Versus

Dharmender Singh and others

..... Respondents

2. FAO-3777-2012 (O&M)

National Insurance Co. Ltd.

..... Appellant

Versus

Sh. Rajbir And others

..... Respondents

Date of decision: 21.05.2018

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Ashwani Arora, Advocate
for the appellants (in FAO-3663-2012).

Mr. Ashwani Talwar, Advocate
for respondent No. 3-Insurance Co. (in FAO-3663-2012) and
for the appellant (in FAO-3777-2012).

Mr. Kunal Mulwani, Advocate Amicus Curiae
for the respondents (in FAO-3777-2012).

RAMENDRA JAIN, J. (ORAL)

1. Through this common judgment, above titled two appeals, one filed by the claimants (FAO-3633-2012) for enhancement and another by the Insurance Company (FAO-3777-2012) for reduction in compensation, against the impugned Award dated 03.02.2012, of the Motor Accident Claims Tribunal, Chandigarh (for short-'the Tribunal'), are being disposed of. For brevity, the facts are being extracted from FAO-3633-2012.

2. Briefly, on 06.12.2009, nine persons including one minor child,

namely; Master Chanderkesh, aged around 11 years, died in a motor vehicular accident having involvement of truck bearing registration No. PB-65-J-5690. The claim petition under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as-'the Act') filed by father and handicap sister of deceased-Chander Kesh, was decided by the learned Tribunal vide impugned consolidated Award dated 03.02.2012, along with other claim petitions, awarding compensation of ₹ 2,80,000/- to them.

3. Being aggrieved, father and handicapped sister of deceased-Chander Kesh have come up before this Court for enhancement of compensation. Few of the other claimants had also approached this Court by way of their respective appeals for enhancement of compensation. Respondent No. 3-Insurance Company, has also filed four counter appeals for reduction of compensation including FAO-3777-2012, modifying the impugned Award dated 03.02.2012. All the other appeals have already been disposed of by co-ordinate Benches of this Court, except the present two.

4. Relying upon judgments in ***(i) R.K. Malik and another Vs. Kiran Pal and others, 2009(14) SCC 1; (ii) Kishan Gopal and another Vs. Lala and others, 2013(4) RCR (Civil) 276; (iii) Oriental Insurance Company Ltd. Vs. Gurdev Singh and others, 2013(2) RCR (Civil) 611; (iv) U.P. State Road Transport Corporation Vs. Trilok Chandra, 1996(4) SCC 362; (v) FAO-443-2014, New India Assurance Co. Ltd. Vs. Kuldeep Chand and others, decided on 22.01.2014; (vi) FAO-1200-2005, Oriental Insurance Company Ltd. Vs. Gaurav and others, decided on 02.04.2014; (vii) FAO-3397-2012, Kallu and others Vs. Dharmender Singh and others, along with other connected appeal bearing FAO-3779-2012, decided on 15.11.2017; (viii) FAO-941-2013, Roma Chhabra @ Roma***

***Rani* Vs. *Ram Kumar and others,* decided on 18.11.2016; (ix) FAO-5-2008, *Sh. Amandeep Singh* Vs. *The Oriental Insurance Company Ltd. and others,* decided on 11.09.2014; (x) *Lata Wadhwa* Vs. *State of Bihar,* 2001 (4) RCR (Civil) 673; (xi) *M.S. Grewal* Vs. *Deep Chand Sood,* 2002 (1) RCR (Civil) 214; (xii) FAO-7822-2015, *Oriental Insurance Co. Ltd.* Vs. *Pinki and others,* decided on 20.11.2015; (xiii) FAO-5155-2013, *Kamlesh* Vs. *Ranjit Singh and others,* decided on 07.04.2017; (xiv) FAO-6564-2011, *Kaushalya Rani and another* Vs. *Lekh Raj @ Lekhu and others,* decided on 09.03.2015; (xv) FAO-141-1994, *Mange Ram and another* Vs. *Dharam Singh and others,* decided on 10.02.2011 and (xvi) *Smt. Krishna Devi* Vs. *Rajinder Kumar (deceased) through LRs and others,* 2017(3) PLR 11,** learned counsel for the appellant-claimants contends that the compensation awarded to the appellant-claimants is liable to be enhanced by taking notional income of the deceased at ₹3300/- per month i.e. ₹39,600/- per annum. That apart, 75% should be awarded to the claimants towards future prospects.

5. On the other hand, relying upon judgments in ***(i) Puttamma and others* Vs. *K.L. Narayana Reddy and another,* 2014(1) RCR (Civil) 443; (ii) *New India Assurance Co. Ltd.* Vs. *Satender and others,* (2006) 13 SCC 60; (iii) FAO-6690-2011, *Jagbir Singh and another* Vs. *Mohd. Salim and others,* decided on 19.03.2018** and ***(iv) National Insurance Company Ltd.* Vs. *Pranay Sethi and others,* 2017(4) R.C.R.(Civil) 1009,** learned counsel for respondent No. 3-Insurance Company, vehemently refuting the above submissions of learned counsel for appellant-claimants contends that according to latest pronouncements of the Apex Court, the appellant-claimants are entitled to a total compensation of ₹ 2,27,500/-

whereas the learned Tribunal has already granted compensation of ₹2,80,000/- to them. Therefore, the same is liable to be reduced.

6. This Court has given anxious consideration to the submissions made by learned counsel for the parties.

7. Learned counsel for the appellant-claimants has relied upon ***R.K. Malik's case (supra),*** to contend that the appellant-claimants are entitled to future prospects against the death of minor Chander Kesh. In that case, the learned Tribunal, according to Second Schedule, has awarded compensation to the tune of ₹1,55,000/- to the dependents of the children between the age group of 10 to 15 years and ₹1,65,000/- between 15 to 18 years. Three children below the age of 10 years were granted compensation of ₹1,05,000/-, ₹1,30,000/- and ₹1,31,000/- considering different circumstances which includes ₹5000/- towards funeral expenses and last rites, besides ₹1000/- in some cases for loss of books. The above compensation was granted taking the notional income at ₹15,000/- per annum.

8. In appeal, the Hon'ble Delhi High Court, further added ₹75,000/- on the ground that school record of the deceased children show that they were good in studies and studying in a reasonable good school. Therefore, their future prospects would be presumed to be good and bright, but there is no yardstick to measure the loss of future prospects of these children. Since, they were performing well in studies, natural consequence supposed to be a bright future.

9. Relying upon judgments in ***Lata Wadhwa's case (supra)*** and ***MS Grewal's case (supra),*** wherein future prospects were recognized as one of the basis and factor to be considered, the Hon'ble Supreme Court further

enhanced ₹75,000/- in each case, whereas in the instant cases, there are no such circumstances, inasmuch as, there is no evidence on the record that deceased Chander Kesh had ever attended the school. In the pleadings and his father in his statement has claimed him to be a student without any corroborative evidence, therefore, no benefit of the above ruling can be given to the appellant-claimants.

10. In ***Kishan Gopal's case (supra),*** the Hon'ble Apex Court has dealt with the motor accidental death of a child died in the year 1992. Notional income of ₹30,000/- per annum was taken in that case by the Hon'ble Apex Curt and multiplier of 15 was applied to the same for a deceased child of 10 years old. In that case, the claim petition was filed under Section 166 of the Act on 30.07.1992.

11. It is pertinent to mention here that Section 163-A of the Act was not on the statute book at that time. It was introduced only on Dt. 15.11.1994. After introducing Section 163-A in the year 1994, there are plethora of rulings for grant of compensation on the basis of Second Schedule under the said section. Therefore, the guidelines laid down by the Hon'ble Supreme Court in the above referred judgment are not applicable to this case for the following two reasons:

(i) The provisions of Sections 166 and 163-A of the Act are distinct to each other. In Section 166-A of the Act, negligence of the offending vehicle is necessarily to be proved to seek compensation, whereas under Section 163-A of the Act, there is no such requirement, rather, only involvement of motor vehicle is must.

(ii) Under Section 166-A of the Act, if negligence is proved,

> in that eventuality, the discretion lies with the Court to take notional income, taking note of attending circumstances of a deceased child and his family i.e. his education status, family background, income etc. whereas under Section 163-A of the Act, its Second Schedule is necessary and mandatory to be followed.

Therefore, the aforesaid authority has no application to the instant case.

12. ***Gurdev Singh's case (supra),*** relied upon by learned counsel for the appellant-claimants relates to an injured-victim and, thus, do not throw any light upon the facts and circumstances of the instant case. However, this Court has no dispute with the law laid down therein that Court, on taking into account the socio-economic dynamics of our society, may deviate from the Second Schedule, as and when found necessary to advance the cause of justice.

13. In ***U.P. State Road Transport Corporation's case (supra),*** the Hon'ble Apex Court, lays down that Second Schedule of Section 163-A of the Act, suffers from several defects. The Hon'ble Apex Court in a recent judgment in ***Puttamma and others' case (supra),*** has reconsidered the above controversy which will be discussed later on at appropriate stage.

14. ***Kuldeep Chand's case (supra),*** (FAO-443-2014), relates to a married woman, who always round the clock provides gratuitous services to her husband and other family members. In these circumstances, the notional income of the deceased-wife was taken at ₹3000/- per month which falls within the limit prescribed under Section 163-A of the Act. In ***Gaurav and others' case (supra),*** (FAO-1200-2005) notional income of a woman aged around 50 years was taken at ₹15,000/- per annum which is again in

accordance with the Second Schedule of Section 163-A of the Act. ***Kallu and others' case (supra),*** (FAO-3397-2012), decided by a co-ordinate Bench of this Court pertains to the impugned accident. In that case, Jauni, child of 13 years, had died along with his mother, Rajwati in the impugned accident. He was contributing to the family by earning around ₹3300/- per month as a ragpicker. However, the learned Tribunal without considering the above factor assessed his income at ₹3000/- per month and made deduction of 50% towards his personal expenses. By deducting that much, the dependency of the claimants was considered at ₹18,000/- per annum. This finding of the learned Tribunal was not disturbed by this Court, but deduction towards his personal expenses was reduced from 50% to 1/3rd considering the fact that he was contributing towards the income of the family. A co-ordinate Bench of this Court in ***Roma Chhabra @ Roma Rani's case(supra),*** (FAO-941-2013), relying upon judgment of Hon'ble the Supreme Court in ***Kishan Gopal's case (supra),*** notional income of the deceased child, aged around 12 years, was taken at ₹ 30,000/- per annum, while granting compensation, but the learned counsel for the appellant-claimants has not been able to point out as to how the above citations help him in the instant case for increase of compensation, in view of law laid down by the Hon'ble Apex Court in ***Puttamma and others' case (supra).***

15. In the judgment of ***Pranay Sethi's case (supra),*** delivered by the Hon'ble Apex Court on 13.10.2017, the judgment in ***Reshma Kumari and others Vs. Madan Mohan and and another, 2009 (3) RCR (Civil)908,*** was upheld. It is held that in a case where the age of deceased is up to 15 years, irrespective of Section 166 or Section 163-A of the Act under which the claim for compensation has been made, multiplier of 15 and the

assessment as indicated in the Second Schedule, subject to correction as pointed out in Column (6) of the Table in ***Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77,*** should be followed.

16. In ***Sh.Amandeep Singh's case (supra)*** (FAO-5-2008), notional income of a deceased child aged around 11 years has been taken at ₹ 15,000/- per annum and applying the multiplier of 15, ₹ 2,25,000/- has been assessed as compensation, but no benefit of the same can be given to the appellant-claimants as the said judgment was delivered much prior to the judgment of ***Pranay Sethi's case (supra).***

17. In ***Lata Wadhwa's case (supra),*** the children under the age group of 10 to 15 years died on 03.03.1989, in the premises of Tata Iron and Steel Company, Jamshedpur, while celebrating 150th Birth Anniversary of Sri Jamshedji Tata. Large number of employees with their families including small children were invited by the organizers, without adhering to the adequate safety measures. The devastating fire engulfed the VIP Pandal and area surrounding and by the time the fire could extinguish, a number of persons lay dead and many were suffering with burn injuries. Some of the injured also died on the way to the hospital or while being treated at the hospital. The death toll reached 60 and the total number of persons injured were 113. Amongst the persons dead, there are 26 children, 25 women and 9 men. Out of 60 person who died, 55 were either employees or relations of the employees of the Tata Iron and Steel Company. Similarly, out of 113 persons injured, 91 were either employees or their relations. Smt. Lata Wadhwa, lost her both the children, a boy and a girl and her parents. Her husband was an employee of the company. She approached the Hon'ble

Apex Court, on the ground that the State of Bihar and the Company was not taking any action against the negligent officers for whose negligence, the tragedy occurred. The State, in its counter affidavit, however, denied the allegations made and further averred that enquiries had been conducted by a Committee, constituted by the Government of Bihar, Department of Labour, Employment and Training and the report was submitted to the company, indicating the negligence of its officers and on that basis, criminal prosecution had been launched. The company also filed counter affidavit, denying the charge of negligence and lack of care and sympathy for the injured as well as for the kith and kin of the deceased. The company, in its counter affidavit, further indicated the steps taken by several employees and how the doctors in the hospital worked round the clock. It was also averred that costly medicines from all the over the world were brought for prompt and appropriate treatment. Being influenced by the steps taken by the company, none of the relatives of the deceased approached any Court or authority for any compensation or damages, except the present petitioner. During the course of hearing, the Hon'ble Apex Court, has assessed the contribution of the deceased children in between the age group of 10 to 15 years at ₹ 24,000/- per annum and applying the multiplier of 15 to the same, has awarded compensation of ₹ 4,10,000/- including ₹ 50,000/- under the conventional head to their parents or relatives.

18. It is, however, pertinent to mention here that by that time also, the provision of Section 163-A of the Act was not introduced by the Parliament in the Act, therefore, compensation was granted as general damages to the kith and kin of the deceased children.

19. In ***MS Grewal's case (supra),*** compensation of ₹ 5 lakhs was

granted on account of death of children cannot be termed to be arbitrary or absurd holding that the Second Schedule of the Act, is only a guide to determine compensation to avoid any arbitrariness. This Court has no dispute with the above dictum laid down by the Hon'ble Apex Court, rather is in complete agreement with the same.

20. The judgment in ***Pinki and others' case (supra)*** (FAO-7822-2015) delivered by a co-ordinate Bench of Court, cannot be made basis for consideration in the instant case, because the judgment by the Hon'ble Apex Court in ***Puttamma and others' case (supra),*** was delivered much prior to the decision in said case. Though, the judgment in ***Kamlesh's case (supra),*** was delivered much later by a co-ordinate Bench of this Court on 07.04.2017, after the judgment of Hon'ble Apex Court in the above referred case, but since the same has not been discussed, therefore, it also cannot be made the basis for grant of compensation.

21. In ***Kaushalaya Rani's case (supra),*** (FAO-6564-2011), the co-ordinate Bench of this Court, taking the notional income of the deceased at ₹ 15,000/- per annum and applying the multiplier of 15 plus ₹ 50,000/- towards loss of love and affection and ₹ 25,000/- for funeral expenses, granted total compensation to the tune of ₹ 3 lakhs (15000x15+50000+ 25000) vide judgment dated 09.03.2015. In ***Mange Ram's case (supra),*** only ₹ 1 lakh has been granted by a co-ordinate Bench of this Court, for the death of a minor child aged around 14 years. In ***Smt. Krishna Devi's case (supra),*** this Court, taking the notional income of the deceased at ₹ 15,000/- per annum and adding ₹ 50,000/- on account of pain, suffering and shock, granted total compensation to the tune of ₹ 2,75,000/- (15000x15+50000).

22. The net result of discussion of all these citations is that each

case has to be decided independently considering the peculiar facts of the same which cannot be identical in any situation. That apart, there is always a different perception in the mind of every Judge, who works independently for grant of just and fair compensation. No two minds can be equal in their perception though may be in agreement to each other for grant of compensation in two different sets. Therefore, the above authorities are only a guiding factor to arrive at just and fair compensation in different situations, for considering various factors like education of the child, his age, family background, dependents upon him, his engagement in some part time job or his working as a labourer etc.

23. However, it is pertinent to mention here that in ***Kishan Gopal's case (supra),*** delivered by a Bench of Hon'ble the Apex Court, headed by Hon'ble Mr. Justice G.S. Singhvi, on 26.08.2013, wherein death of a child had occurred in the year 1992, by which time Section 163-A of the Act had not seen light of the day. The judgment in ***Puttamma and others' case (supra)*** is also delivered by a Bench of the Hon'ble Apex Court headed by Hon'ble Mr. Justice G.S. Singhvi, wherein it was held that till the Union of India, amends the Second Schedule, compensation for the death of a child of aged around 5 years would be ₹1,50,000/- or the amount may be determined in terms of Second Schedule, whichever is higher. In the latest pronouncement of Hon'ble the Apex Court in ***Pranay Sethi's case (supra),*** the multiplier of 15 has been held to be equitable irrespective of Sections 166 or Section 163-A of the Act in the case, where age of the deceased was up to 15 years.

24. In the instant case, there is no income proof of deceased-Chander Kesh aged around 13 years at the time of his death. The learned

Tribunal, has taken his income at ₹ 3000/- per month and 50% has been deducted from the same towards his personal expenses. The learned Tribunal has awarded total compensation of ₹ 2,80,000/- after applying multiplier of 15 which includes ₹ 3000/- for funeral expenses and ₹ 7000/- towards loss of estate. In case, this Court applies the dictum of ***Pranay Sethi's case (supra),*** in that eventuality, the compensation is liable to be reduced, but this Court in not inclined to do so, in view of law laid down by Hon'ble Supreme Court in ***Hem Raj Vs. Oriental Insurance Co. Ltd. and others, 2018(2) PLR 480,*** wherein it has been held that the amount already received by the claimant would not be liable to be refunded. In the instant case, 75% of the compensation amount has already been disbursed to the appellant-claimants, inasmuch as, the balance 25% was stayed by this Court vide order dated 17.08.2012 (in FAO-3777-2012). The learned Tribunal, has given recovery rights to respondent No. 3-Insurance Company against respondents No. 1 and 2, driver and owner of the offending truck, therefore, there is no loss to respondent No. 3-Insurance Company, if the amount of compensation already granted by the learned Tribunal is not reduced.

25. As a sequel of my discussion above, the impugned Award is upheld and both the appeals are dismissed. Respondent No.3-Insurance Company, through its counsel is directed to deposit the balance 25% of the awarded amount along with up-to-date interest @ 6% per annum from the date of filing of claim petition till its realization, within two months from today before the Tribunal for onward disbursement of the same to the appellant-claimant in proportion so arrived at by it, in accordance with law against proper receipt and identification.

26. It is, however, made clear that non-deposit of balance 25% of

the amount of compensation within the stipulated period would entail interest @ 12% per annum with quarterly rests.

May 21, 2018 **(RAMENDRA JAIN)**
rishu **JUDGE**

Whether speaking/reasoned	**Yes/No**
Whether Reportable	**Yes/No**